



Filing Requirements and the Calculation of Tax for Unauthorized Insurance Corporations

This memorandum provides guidance regarding the filing requirements and the calculation of the Article 33 franchise taxes for unauthorized insurance corporations. An unauthorized insurance corporation is one that does not have a certificate of authority from the Superintendent of Financial Services to conduct an insurance business in New York State.

This memorandum also announces a change in the department's interpretation of the Tax Law with respect to unauthorized life insurance corporations.

Tax on unauthorized life insurance corporations

Section 1501 of the Tax Law provides that insurance corporations subject to tax under Article 33 must compute their tax due pursuant to section 1502 of the Tax Law. These insurance corporations must therefore pay the tax on allocated subsidiary capital, if applicable, plus the highest amount of tax computed on four bases:

- (1) a tax on allocated entire net income;
- (2) a tax on allocated business and investment capital;
- (3) a tax on a prescribed portion of entire net income plus salaries and other compensation of elected or appointed officers and certain stockholders; or
- (4) a fixed dollar minimum tax of \$250.

Section 1505(a)(2) of the Tax Law provides a limitation on the amount of tax under Article 33 paid by insurance corporations subject to the additional premiums tax under Section 1510(b)(1).¹ Since unauthorized life insurance corporations are not subject to the additional premiums tax imposed under section 1510(b)(1), the tax on these corporations is not limited by section 1505(a)(2). This interpretation, which the department believes is a better interpretation of the statutory provisions, is in effect for taxable years beginning on or after January 1, 2012. It represents a change from an earlier interpretation, contained in advisory opinions issued by the department, that the limitation did apply to unauthorized life insurance companies.

Accordingly, unauthorized life insurance corporations are required to pay the tax on the highest of the four bases plus any applicable tax on allocated subsidiary capital computed pursuant to section 1502. For taxable years beginning on or after January 1, 2012, these taxes are not limited pursuant to section 1505(a)(2).

¹ A limitation on tax provided by 1505(a)(1) that applied to taxpayers not subject to the tax imposed by section 1510(b)(1) expired and does not apply to taxable years beginning on or after January 1, 2003.

Unauthorized life insurance corporations must file Form CT-33, *Life Insurance Corporation Franchise Tax Return*, or Form CT-33-A, *Life Insurance Corporation Combined Franchise Tax Return*, if applicable. Unauthorized life insurance corporations subject to the MTA surcharge must file Form CT-33-M, *Insurance Corporation MTA Surcharge Return*.

Tax on unauthorized non-life insurance corporations

Section 1501 of the Tax Law provides that insurance corporations subject to tax under Article 33 must compute their tax due pursuant to section 1502 of the Tax Law. These insurance corporations must therefore pay the tax on allocated subsidiary capital, if applicable, plus the highest amount of tax computed on four bases:

- (1) a tax on allocated entire net income;
- (2) a tax on allocated business and investment capital;
- (3) a tax on a prescribed portion of entire net income plus salaries and other compensation of elected or appointed officers and certain stockholders; or
- (4) a fixed dollar minimum tax of \$250.

However, section 1502-a of the Tax Law imposes a tax on premiums in lieu of the taxes imposed under section 1501 (computed under the provisions of section 1502) on every domestic, foreign, or alien non-life insurance corporation authorized by the Superintendent of Insurance to transact business in New York, on risk retention groups, and on for-profit health maintenance organizations (HMOs). The provisions of section 1502-a of the Tax Law do not apply to unauthorized non-life insurance corporations that are not risk retention groups or HMOs. Therefore, unauthorized non-life insurance corporations that are not risk retention groups or HMOs are subject to tax under section 1501 and must compute their tax due under section 1502 of the Tax Law.

A limitation on tax provided by section 1505(a)(1) expired and does not apply to taxable years beginning on or after January 1, 2003. Therefore, for taxable years beginning on or after January 1, 2003, unauthorized non-life insurance corporations that are not risk retention groups or HMOs are required to pay the tax on the highest of the four bases plus any applicable tax on allocated subsidiary capital pursuant to section 1502.

Unauthorized non-life insurance corporations must file Form CT-33, *Life Insurance Corporation Franchise Tax Return*, or Form CT-33-A, *Life Insurance Corporation Combined Franchise Tax Return*, if applicable. Unauthorized non-life insurance corporations subject to the MTA surcharge must file Form CT-33-M, *Insurance Corporation MTA Surcharge Return*.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.